



Legal Alert

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Copyrighted Materials

QUESTION: CAN I REALLY GET IN TROUBLE FOR POSTING THAT CUTE LITTLE POEM ON OUR WEBSITE?

ANSWER: YOU MAY HAVE INCURRED SIGNIFICANT LIABILITIES IF THE “CUTE LITTLE POEM” IS COPYRIGHTED!

No one thinks about sharing poems or stories in newsletters or on websites. Sending an email with some witty or poignant information is easy and very common. How could anything so innocent cost you money?

Let's look at the case of Linda M. Ellis , dba Linda's Lyrics v. Eric J. Aronson and Dash Systems, Inc., from the U.S. District Court for the Northern District of Georgia. Ms. Ellis proved to the court that the defendants infringed her copyright in the poem, “The Dash.” (No, I'm not going to quote it for you here!) The court enjoined “infringement through reproduction of the copyrighted [w]ork, both in printed publications and in electronic media” The court also entered judgment against the defendants for \$150,000 in statutory damages and attorneys' fees of \$114,066.73. (\$264,066.73! See why I won't quote the poem for you!)

So What Are Copyrights?

Many of the rules involving copyrights are found in Title 17 of the United States Code. Copyright protection exists for “original works . . . in any tangible medium of expression” Protected “works of authorship” include works of literature, music, drama, choreography, artwork, movies, recordings and architectural drawings. As you might imagine, the law of copyrights is complicated.

So What Can The Owner Of A Copyright Do?

The owner of copyrights has exclusive rights to do certain things with the copyrighted works. The owner of the copyright has the exclusive right to reproduce the material and “to prepare derivative works based upon the copyrighted work.” The owner of the copyright also has the exclusive right to distribute copies “to the public by sale or other transfer of ownership, or by rental, lease, or lending.” The owner may have the exclusive right to display the copyrighted work publicly or to play sound recordings.

So Why Should I Care About Infringing On Copyrights?

The infringer of a copyright may be liable for the actual damages suffered by the copyright owner and any profits obtained by the infringer. If you make it impossible for an artist to sell her music because you gave it to everyone for free, then the owner of the copyright has been greatly damaged. On the other hand, if you sold the music and made a lot of money, then you would be liable for your profits. Obviously, these amounts could be substantial.

But you are probably saying so what do I care because what damage could I have caused by posting the poem on the website? And I certainly didn't profit from printing the poem in our newsletter!

The statute provides for statutory damages of not less than \$750 or more than \$30,000 "as the court considers just." But if the copyright owner proves that the infringement was committed "willfully," the court may increase the award of statutory damages to as much as \$150,000!

So don't mess around distributing materials that might be copyrighted. You may be in for some unpleasant surprises. Check first before you post or publish.

If you need to protect your original works by means of copyright, you need to learn the rules. Protecting your copyright requires diligence and the rules can be quite complex.

If you need guidance in preventing copyright infringement or in protecting your intellectual property, please call me.

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